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No. 84-1997

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GEORGE BOBIS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Illinois Appellate Court, First District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the Illinois Appellate Court impermissibly interchanged sanity and intent as elements of the offense of attempt murder, thereby relieving the prosecutor of having to prove a requisite element of the offense of attempt murder.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On June 8, 1982, petitioner was charged in the Circuit Court of Cook County, Illinois, with attempt murder, armed violence and two counts of aggravated battery for the shooting of his wife. At his bench trial petitioner raised the defense of insanity. The trial court found that the State had proven beyond a reasonable doubt that petitioner was sane at the time the offense occurred. The trial court then found petitioner guilty of all four offenses and sentenced him to two concurrent terms of 15 years imprisonment.

Petitioner's convictions were affirmed on direct appeal by the Appellate Court of Illinois, First District, in an unpublished order pursuant to Illinois Supreme Court Rule 23, 87 Ill.2d 275, R. 23, a copy of which is attached to the petition. The Illinois Supreme Court denied leave to appeal.

The facts underlying the convictions are adequately set forth in the Appellate Court's order, and need not be restated here. Respondent directs this Court's attention to the argument portion of this brief, wherein the pertinent facts are discussed.

REASON FOR DENYING THE WRIT

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED, SINCE THE QUESTION PETITIONER SEEKS TO HAVE REVIEWED INVOLVES NO MORE THAN THE APPLICATION OF WELL-SETTLED CONSTITUTIONAL PRINCIPLES TO THE FACTS OF THIS CASE.

The decisions of this Court have firmly established that the due process clause requires proof beyond a reasonable doubt to support a conviction for a criminal offense, *In Re Winship*, 397 U.S. 358 (1970), and that on review, a verdict of guilt must be affirmed if, viewing the evidence as a whole and in the light most favorable to the prosecution, any rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *Moore v. Duckworth*, 443 U.S. 713 (1979). Petitioner asserts that the Appellate Court impermissibly substituted the element of intent in the offense of attempt murder with a finding of sanity.

This in turn, petitioner argues, relieved the prosecution of proving beyond a reasonable doubt that petitioner had the specific intent to murder his wife. This novel interpretation of the Appellate Court's order is lacking in merit and does not warrant the expenditure of this Court's time to deal with the question.

Initially, the question presented to this Court was not presented to the Illinois Appellate Court in petitioner's petition for rehearing. (See Appendix A) There, petitioner's argument was: "[t]he order entered by this Honorable Court on October 30, 1984, ignored Defendant's argument that the State failed to prove beyond a reasonable doubt that George Bobis had the requisite specific intent to sustain a charge of attempted murder." (App. A.) No argument was made that the Appellate Court substituted a finding of sanity for the element of intent, thereby relieving the prosecution from proving the latter beyond a reasonable doubt. Indeed, nothing in the Appellate Court's order would support such an order. That court merely did not decide the issue of whether the State had proven the intent element beyond a reasonable doubt, but rather dealt with the issue of whether the trial court abused its discretion in finding that the State had proved beyond a reasonable doubt that petitioner was sane at the time the offense occurred. Thus, the gravaman of petitioner's complaint is not the question as now presented but, rather, whether the evidence was sufficient to prove that petitioner was guilty of attempt murder beyond a reasonable doubt. He asks this Court to grant certiorari for the sole purpose of applying well-settled constitutional principles to the facts of his case. The question he presents turns entirely on the facts, and is of interest only to the parties. Review of such questions is not the purpose to be served by a grant of certiorari. As Justice

Holmes once observed, "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925). *Accord, Texas v. Mead*, ____ U.S. ____, 104 S.Ct. 1318, 1320, 796 L.Ed.2d 714, 716 (1984) (opinion of Stevens, J., respecting the denial of certiorari). Thus, respondent submits that no substantial federal question is presented for review.

Moreover, it is clear that petitioner is guilty of attempt murder. On the day in question petitioner was informed by a friend that people were moving furniture from his house. Petitioner and his wife had agreed to a divorce but she was not to move out until the next day. (R. 185) Upon arriving at his home petitioner and his wife struggled in the kitchen. Petitioner then dragged his wife to their upstairs bedroom, pushed her on the floor and sat on her. (R. 38) He then reached into his dresser and pulled out a .357 magnum. (R. 39, 120) His wife put her hands in front of her face and said, "Please, George, don't hurt me." (R. 39) Pushing her hands away, petitioner drew the gun down and said, "If I can't have you, nobody else will." (R. 39) Petitioner then put the gun to the tip of her nose and shot her. The petitioner then picked her head up and fired another bullet into the back of her head. (R. 40) From these facts it is obvious defendant intended to kill his wife. The trial court concluded, "[H]e acted intentionally and he intended to kill his wife." (R. 430) Under these circumstances, it is far from irrational to conclude that attempt murder was proved beyond a reasonable doubt. The petition for a writ of certiorari should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons respondent prays that this Honorable Court deny the instant petition for a writ of habeas corpus.

Respectfully submitted,

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APPENDIX A

NO. 83-2526

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
(Filed November 20, 1984)

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

-vs-

GEORGE BOBIS,

Defendant-Appellant.

PETITION FOR REHEARING

I.

STATEMENT OF THE CASE

Judgment affirming Defendant George Bobis' conviction on four counts was entered by this Honorable Court on October 30, 1984. Defendant's petition for rehearing is timely filed pursuant to Illinois Supreme Court Rule 367 and stays issuance of the mandate.

II.

POINT ON REHEARING

The order entered by this Honorable Court on October 30, 1984 ignored Defendant's argument that the State failed to prove beyond a reasonable doubt that George

Bobis had the requisite specific intent to sustain a charge of attempted murder.

George Bobis, after shooting his wife, Louise, was convicted on a four-count information with attempted murder, armed violence and two counts of aggravated battery. The central issue presented at trial was whether George Bobis was sane at the time he shot his wife. On appeal, George Bobis raised the issue of his sanity and the issue of whether, assuming he was sane, he had the requisite intent to commit murder. In the opinion of October 30, 1984, this Honorable Court addressed the issue of sanity but wholly ignored the alternative argument of whether the State proved beyond a reasonable doubt that George Bobis had the requisite intent to commit murder. (Appellant's Brief, pages 18-19).

At trial, the three expert witnesses agreed that George Bobis had a mental disorder. The experts disagreed, however, as to the severity and diagnosis of that disorder. The experts for the State classified George Bobis as having a narcissistic personality. Mr. Bobis' treating physician diagnosed him as having a borderline personality disorder. One characteristic of both diagnoses, however, was the low threshold of frustration and anger.

In this case, George Bobis was deeply angry with his wife at the time of the shooting. But the evidence failed to establish beyond a reasonable doubt that he had the conscious objective or purpose to accomplish murder, which is necessary to sustain a conviction for attempted murder. The lack of conscious objective or purpose to accomplish murder is clear from the evidence. George Bobis, after shooting Louise, carried her downstairs and immediately sought medical attention for her. He called the paramedics. Further, George put Louise in the car and started

driving towards the hospital. When stopped by the police, George repeatedly stated that he was trying to get Louise to the hospital. (R. 108, 109, 121, 40, 42).

The failure of the State to prove that George Bobis had the requisite conscious objective or purpose to commit murder requires reversal of his conviction for attempted murder.

Defendant Bobis requests that this Honorable Court address this issue, which was presented on appeal and overlooked in this Court's opinion.

Respectfully submitted,

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